

NAYS—46

Akaka	Dorgan	Lieberman
Baucus	Durbin	Lincoln
Bayh	Feingold	Mikulski
Biden	Feinstein	Murray
Bingaman	Graham (FL)	Nelson (FL)
Boxer	Harkin	Nelson (NE)
Breaux	Hollings	Pryor
Byrd	Inouye	Reed
Cantwell	Jeffords	Reid
Carper	Johnson	Rockefeller
Clinton	Kennedy	Sarbanes
Conrad	Kohl	Schumer
Corzine	Landrieu	Stabenow
Daschle	Lautenberg	Wyden
Dayton	Leahy	
Dodd	Levin	

NOT VOTING—2

Edwards	Kerry
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The PRESIDING OFFICER. On this vote, the yeas are 52 and the nays are 46. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. REID. I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NOMINATION OF RICHARD A. GRIFFIN TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 789, Richard A. Griffin of Michigan, to be U.S. circuit judge for the Sixth Circuit.

Bill Frist, Orrin Hatch, Lamar Alexander, Charles Grassley, Mike Crapo, Pete Domenici, Lincoln Chafee, Mitch McConnell, Ted Stevens, George Allen, Lindsey Graham, John Warner, Jeff Sessions, John Ensign, Trent Lott, Jim Talent, Pat Roberts.

Mr. HATCH. Mr. President, I am pleased that we are considering the nominations of Judge Richard Griffin and Judge David W. McKeague, who have been nominated by President Bush to serve on the United States Court of Appeals for the Sixth Circuit. These individuals each have a sterling resume and a record of distinguished public service. So I rise today to express my enthusiastic support for the confirmation of Judge Richard Griffin and Judge David W. McKeague to the Sixth Circuit Court of Appeals.

It is unfortunate that we have to continue coming to the floor to vote on cloture motions, to end debate on these nominations, rather than the Senate being able to vote up or down on the merits of the nomination. This unprecedented abuse of the process, by filibuster, to prevent a majority of the Senate from exercising its will is truly

disturbing. What is going on is a hijacking of the constitutional process of advice and consent.

This abuse of the process isn't just being used on these two nominees. Unfortunately, we have now reached double-digit filibusters. There are ten judicial nominees who have been subjected to a filibuster. They are Miguel Estrada, D.C. Circuit; Priscilla Owen, 5th Circuit; William Pryor, 11th Circuit; Charles Pickering, 5th Circuit; Carolyn Kuhl, 9th Circuit; Janice Rogers Brown, D.C. Circuit; Williams Myers, 9th Circuit; Henry Saad, 6th Circuit; David McKeague, 6th Circuit; and Richard Griffin, 6th Circuit. In addition to these ten individuals, there are five additional Circuit Court nominations that are threatened to be filibustered—Claude Allen, 9th Circuit; Terrence Boyle, 4th Circuit; Susan Neilson, 6th Circuit; Brett Kavanaugh, D.C. Circuit; and William Haynes, 4th Circuit.

These individuals being filibustered represent a cross section of America and include men and women as well as members of various minority groups. And they are decent individuals with outstanding records in the law, in public service and in their States and communities.

It appears that these nominations are being tied up as some sort of payback for the way President Clinton's nominees were treated. However, a review of the record will demonstrate that this contention is without merit. What is happening is the creation of a stalemate for political purposes.

The current controversy surrounding the nomination of Henry Saad to be United States Circuit Judge for the Sixth Circuit dates back a decade. At the end of President George H.W. Bush's administration two Michigan nominees to the federal courts were denied hearings by the Democratic Senate and failed to attain confirmation. Those nominees were John Smientanka and Henry Saad, whose nomination we are considering again today.

As President Clinton named his nominees to fill judicial vacancies, there was no expectation, let alone demand, that the two previous nominees be renominated by a new administration. Accordingly, President Clinton did nominate Michigan nominees to both the Sixth Circuit and the district courts. In fact, nine of those nominees were confirmed. A majority were confirmed during Republican control of the Senate.

Two nominees, Helene White and Kathleen McCree Lewis, failed to attain confirmation. The primary circumstance for their failed nomination was the lack of consultation with one of the home State senators. In his letter to then White House Counsel Beth Nolan, Senator Abraham wrote to express his astonishment and dismay that President Clinton forwarded the nomination for a Sixth Circuit seat without any advance notice or consultation.

What was particularly troubling was that Senator Abraham had worked with the previous White House Counsel, Mr. Ruff, to improve the consultation process. In fact, despite previous difficulties, Senator Abraham had fully cooperated with the administration in advancing the nominations of a number of Michigan nominees. Unfortunately, the situation again deteriorated and the White House reverted to its previous pattern of lack of consultation. In fact, Senator Abraham was not consulted and in fact was told by the White House Counsel that despite earlier representations, the administration felt under no real obligation to do anything of the kind.

Because of the White House's lack of consultation, the nominations of the two individuals did not move forward. This was consistent with my well stated policy, communicated to Mr. Ruff, that if good faith consultation has not taken place, the Judiciary Committee will treat the return of a negative blue slip by a home state Senator as dispositive and the nominee will not be considered.

At the end of the Clinton presidency, the nominations of Ms. White and Ms. Lewis were returned to the President unconfirmed. Their renomination was urged by Senators LEVIN and STABENOW at the beginning of President Bush's administration. During the spring and summer of 2001, there was considerable consultation by the President with the Michigan Senators regarding nominations to judicial vacancies, and the Sixth Circuit in particular.

While the White House protected its constitutional prerogative to nominate individuals to the judiciary, there was an offer to consider nominating both of the two individuals to Federal judgeships in Michigan in an effort to advance the process. These overtures were not only rebuffed, but in fact holds were requested to be placed on all Sixth Circuit nominations.

This was an unfortunate escalation of the dispute, and was particularly unfair to other States in the Sixth Circuit. In addition, this left the circuit at half-strength. Fortunately, we have been able to confirm non-Michigan judges to the circuit court.

I regret that the cycle of acrimony and partisanship has escalated over the past decade. I believe the Bush administration made a good faith offer and regrets that the compromise was not accepted. However, even as the Judiciary Committee gives appropriate consideration to the views of home State senators, it is not in the public interest to permit this partisan obstructionism to continue.

So let me summarize regarding the treatment of Michigan judicial nominees. During the current Bush presidency the Senate has confirmed no Michigan judges. Six nominations are pending. During the Clinton presidency the Senate confirmed nine Michigan judges. Although two Michigan nominees were left unconfirmed at the end

of the Clinton presidency, two nominees were also left without hearings at the end of President Bush's term in 1993. During the first Bush presidency the Senate confirmed six Michigan judges. Two nominations were returned to the President.

So for those who like to keep score, the Michigan judge tally is as follows: Current President Bush: 0-6; President Clinton: 9-2; former President Bush: 6-2. The record is clear that previous Presidents were treated fairly by the Senate. It is time to give President Bush the same courtesy and move forward with his Michigan Judges to the Sixth Circuit and the District Courts. We can begin by approving the cloture motions we will vote on today for Henry Saad, Richard Griffin, and David McKeague.

Yesterday I spoke about the qualifications of Henry Saad. I would like to say a few words about the qualifications of the other two nominees whom we are voting on today.

Judge Griffin has exceptional qualifications for the Federal appellate bench. After graduating from the University of Michigan Law School in 1977, Judge Griffin spent 11 years in the private practice of law first as an associate at Williams, Coulter, Cunningham, Davison & Read from 1977-1981, then as a partner from 1981-1985. In 1985, Judge Griffin founded the firm Read & Griffin, in Traverse City, MI.

During his private practice Judge Griffin specialized in automobile negligence, premises liability, products liability, and employment law. Additionally, he provided pro bono legal services as a volunteer counselor and attorney with the Third Level Crisis Center. In 1988, Judge Griffin was elected to the Michigan Court of Appeals. He was elected to retain his seat in 1996 and again in 2002.

Judge Griffin was first nominated to this position by President George W. Bush on June 26, 2002. He was renominated to this seat on January 7, 2003. He is universally respected as one of the best judges in Michigan. He is not a controversial nominee. Yet he has been waiting for a vote for over 750 days because my colleagues on the other side of the aisle are, once again, playing politics with the Federal judiciary.

Judge Griffin has an exemplary record that includes service as both a committed advocate and an impartial jurist. The American Bar Association has rated him well qualified for this position. Although the ABA rating used to be the gold standard as far as my Democratic colleagues were concerned, I am only half joking when I say that an ABA rating of well qualified seems to have become the kiss of death for President Bush's judicial nominees. Miguel Estrada, Carolyn Kuhl, David McKeague, William Haynes, Charles Pickering and Priscilla Owen, all received Well Qualified ratings from the ABA, and all are, or were, being filibustered by Democrats.

Judge Griffin deserves to fare better, and I certainly hope we can give his nomination an up-or-down vote on the Senate floor.

Simply put, Judge Griffin—along with the other qualified nominees to the Sixth Circuit—deserves a vote. I urge my colleagues to do what is right and join me in supporting his confirmation to the Sixth Circuit Court of Appeals.

Judge David McKeague has also been nominated to serve on the Sixth Circuit Court of Appeals. Judge McKeague was first nominated to fill a Federal judgeship in 1992, when the first President Bush nominated him for a seat on the United States District Court for the Western District of Michigan. The Judiciary Committee voted him to the floor with several other district court nominees en bloc, without any objection, and the full Senate confirmed him to the Federal bench by unanimous consent. Since 1992, he has served with distinction in the Western District of Michigan, and since 1994 has regularly been designated to sit on panels and draft appellate opinions for the Sixth Circuit Court of Appeals.

On November 8, 2001, President Bush nominated Judge McKeague for a seat on the Sixth Circuit, the position for which we are considering him today. When no action was taken on his nomination during the 107th Congress, President Bush renominated him to the Sixth Circuit on January 7, 2003. As with the other nominees, it is time for the Senate to vote up or down on this nomination.

In Judge McKeague, we have a jurist with impressive credentials who will honor his hometown of Lansing and serve with great distinction as a Sixth Circuit judge, as he already has for more than a decade as a Federal district judge in western Michigan.

Judge McKeague graduated from the University of Michigan in 1968 and then attended the University of Michigan Law School. Upon his graduation from law school in 1971, he joined the law firm of Foster, Swift, Collins & Smith, P.C., in Lansing, MI, and in 1976 was elected a shareholder and director of the firm. Judge McKeague served on the firm's executive committee in various offices, and was chairman of the firm's government and commerce department, from 1979 until his confirmation to the Federal bench in February 1992, where he serves as a judge on the U.S. District Court for the Western District of Michigan.

Since 1994, Judge McKeague regularly has participated by designation on, and authored appellate opinions for, panels of the U.S. Court of Appeals for the Sixth Circuit. So he already has considerable experience in handling Federal appellate cases—in fact, I understand that none of the decisions he has authored for the Sixth Circuit have been reversed—and I am certain that experience will serve him well once he is handling cases full time on the Sixth Circuit.

Judge McKeague has been active as a member of several community, local, and professional organizations, including the Judicial Conference of the United States, the Federal Judicial Center, the Michigan State and Ingham County bar associations, the board of directors of a community museum that provides science education for children, Junior Achievement, which provides business education to high school students, and Camp Highfields, a private facility that provides housing and counseling for troubled youth. He has also been active as a member of the Wharton Center for the Performing Arts Advisory Council, the American Inns of Court, the Catholic Lawyers Guild, and the Federalist Society for Law and Public Policy Studies. While in private practice and since his service on the Federal bench began, he has directed and participated in numerous seminars, moot court competitions, and trial advocacy programs at high schools, universities and law schools throughout Michigan. In addition, prior to his confirmation to the Federal bench, he served 6 years in the United States Army Reserve. Since 1998, he has also served as an adjunct professor of law at Michigan State University's Detroit College of Law, where he teaches Federal jurisdiction.

Judge McKeague is a distinguished and well-respected Federal judge who, in the words of one of his current colleagues on the Federal district court, "let the law and the facts take him where they take him." He will make an outstanding addition to the Sixth Circuit, and I urge my colleagues to vote for his confirmation.

Let me make something absolutely clear: We need to vote on these nominations because it is critical that these Sixth Circuit vacancies are filled as expeditiously as possible.

The Sixth Circuit has a vacancy rate of 25 percent, and the four vacancies are all deemed judicial emergencies by the Administrative Office of the U.S. Courts. Among the twelve United States Courts of Appeal, the Sixth Circuit is last in the timeliness of its disposition of cases. For the 12-month period ending September 30, 2003, the median time interval from filing of Notice of Appeal to final disposition was 16.8 months. This was nearly 10 months longer than the Fourth Circuit Court of Appeals which was the fastest court that year at 7 months. By comparison, the average disposition time for appeals in all Circuits was about 10½ months.

Mike Cox, the Attorney General for the State of Michigan, wrote to the committee last year:

My office alone has over 430 cases currently pending before the Sixth Circuit Court of Appeals. Those cases range the gamut of the law, from habeas matters involving horrendous murders to cases involving matters of broad public policy. . . . [O]n behalf of the citizens of my state, I urge you to quickly approve Judge Saad's nomination, and begin easing the vacancy crisis that has lingered far too long at the Sixth Circuit.

District judges and U.S. attorneys within the Sixth Circuit have publicly stated that the vacancy rate in the Sixth Circuit has slowed the administration of justice. Accordingly, nine members of Michigan's Congressional delegation have written to the Judiciary Committee, expressing their deep concern over the persistence of the Michigan vacancies and urging us to confirm President Bush's Michigan nominees. Under such circumstances, with the understanding that we will continue to work to resolve the Michigan Senators' concerns, we simply must move forward on these nominations and confirm Judge Saad, Judge Griffin, and Judge McKeague to the Sixth Circuit.

I yield the floor.

The PRESIDING OFFICER. By unanimous consent, the call for a quorum has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Richard A. Griffin, of Michigan to be United States Circuit Judge for the Sixth Circuit shall be brought to a close.

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 54, nays 44, as follows:

[Rollcall Vote No. 161 Ex.]

YEAS—54

Alexander	Dole	McConnell
Allard	Domenici	Miller
Allen	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Fitzgerald	Nickles
Brownback	Frist	Roberts
Bunning	Graham (SC)	Santorum
Burns	Grassley	Sessions
Campbell	Gregg	Shelby
Chafee	Hagel	Smith
Chambliss	Hatch	Snowe
Cochran	Hutchison	Specter
Coleman	Inhofe	Stevens
Collins	Kyl	Sununu
Cornyn	Lincoln	Talent
Craig	Lott	Thomas
Crapo	Lugar	Voinovich
DeWine	McCain	Warner

NAYS—44

Akaka	Dodd	Leahy
Baucus	Dorgan	Levin
Bayh	Durbin	Lieberman
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Nelson (FL)
Breaux	Harkin	Pryor
Byrd	Hollings	Reed
Cantwell	Inouye	Reid
Carper	Jeffords	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Kohl	Stabenow
Daschle	Landrieu	Wyden
Dayton	Lautenberg	

NOT VOTING—2

Edwards	Kerry
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The PRESIDING OFFICER. On this vote, the yeas are 54, the nays are 44.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. REID. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

NOMINATION OF DAVID W. MCKEAGUE TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 790, David W. McKeague, of Michigan, to be U.S. circuit judge for the Sixth Circuit.

Bill Frist, Orrin Hatch, Lamar Alexander, Charles Grassley, Mike Crapo, Pete Domenici, Lincoln Chafee, Mitch McConnell, Ted Stevens, George Allen, Lindsey Graham, John Warner, Jeff Sessions, John Ensign, Trent Lott, Jim Talent, Pat Roberts.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of David W. McKeague, of Michigan, to be United States Circuit Judge for the Sixth Circuit, shall be brought to a close.

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from New Hampshire (Mr. GREGG) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 44, as follows:

[Rollcall Vote No. 162 Ex.]

YEAS—53

Alexander	Dole	Miller
Allard	Domenici	Murkowski
Allen	Ensign	Nelson (NE)
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Brownback	Frist	Santorum
Bunning	Graham (SC)	Sessions
Burns	Grassley	Shelby
Campbell	Hagel	Smith
Chafee	Hatch	Snowe
Chambliss	Hutchison	Specter
Cochran	Inhofe	Stevens
Coleman	Kyl	Sununu
Collins	Lincoln	Talent
Cornyn	Lott	Thomas
Craig	Lugar	Thomas
Crapo	McCain	Voinovich
DeWine	McConnell	Warner

NAYS—44

Akaka	Dodd	Leahy
Baucus	Dorgan	Levin
Bayh	Durbin	Lieberman
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Nelson (FL)
Breaux	Harkin	Pryor
Byrd	Hollings	Reed
Cantwell	Inouye	Reid
Carper	Jeffords	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Kohl	Stabenow
Daschle	Landrieu	Wyden
Dayton	Lautenberg	

NOT VOTING—3

Edwards	Gregg	Kerry
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The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. I ask unanimous consent to speak as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

GENOCIDE IN SUDAN

Mr. FEINGOLD. Mr. President, I rise to join my colleagues in expressing my continued grave concern about the situation in Darfur, Sudan. For months now, Members of Congress have come to the floor to express their outrage at the situation in Darfur. All credible evidence indicates that what is unfolding in Darfur is genocide. Already, an estimated 30,000 civilians have been killed. More than 130,000 refugees have fled to Chad, and more than 1 million people have been displaced.

Numerous credible reports document the widespread use of rape as a weapon against female civilians. Entire communities have been razed, mosques destroyed, and wells poisoned, guaranteeing that a grave humanitarian crisis will continue to unfold for many months or even years. And now reports indicate that terrified survivors are being forced to return to their homes, which have been utterly destroyed, in a context of serious insecurity by Government officials who apparently view their own suffering citizens as something like a source of embarrassment.

Those of us who have followed developments in Sudan for many years see a horrifying familiarity in this crisis. The Government of Sudan has deliberately provoked a humanitarian catastrophe before in an attempt to repress dissent, and so for months now Members have come to the floor to speak out about this crisis.

I have written and spoken to administration officials, to U.N. officials, and to European officials to call for action and a firm unified message to Khartoum. I have raised the issue, as have